

APPEAL NO. 021149  
FILED JUNE 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2002, and on April 9, 2002. As to the sole appealed issue, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter because the impairment from the \_\_\_\_\_, compensable injury was a cause of his reduced earnings and he made a good faith effort to seek employment within the meaning of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The appellant (carrier) appealed. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

Sections 408.142(a) and 408.143 and Rule 130.102 provide the statutory and regulatory requirements for entitlement to SIBs. At issue in this case is whether the claimant's unemployment or underemployment during the relevant time period was a direct result of the impairment from the compensable injury, and whether he made the requisite good faith effort to obtain employment commensurate with his ability to work.

The hearing officer did not err in determining that the claimant's unemployment or underemployment during the relevant time period was a direct result of the impairment from the compensable injury. The issue presented a question of fact for the hearing officer to resolve and we find that his determination is supported by sufficient evidence to be affirmed.

The hearing officer erred as a matter of law in determining that the claimant is entitled to SIBs for the second quarter. The parties did not stipulate to the qualifying period for the second quarter. The hearing officer found that the qualifying period for the second quarter was from May 31 through August 29, 2001; and that determination has not been appealed. The claimant's Application for [SIBs] (TWCC-52) for the second quarter had 20 job contacts (2 of the 20 contacts were outside of the qualifying period). The claimant documented the month and year of the contacts (i.e., "6/01"), he did not document the calendar date he made the contacts.

Rule 130.102(e) provides in pertinent part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. See *also* Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000; and Texas Workers' Compensation Commission Appeal No. 000776, decided May 30, 2000. In the instant

case, the claimant documented his job search by month, and Rule 130.102 clearly requires weekly documentation. As such, there is no documentation in the record to support a determination that the claimant made and documented a job contact every week as specifically required by Rule 130.102(e). The hearing officer's finding that the claimant made a good faith effort to seek employment within the meaning of the rules is unsupported by the evidence, and is wrong as a matter of law. Therefore, we find that the claimant is not entitled to SIBs for the second quarter because the requirements of Rule 130.102(e) have not been met.

The hearing officer's decision that the claimant's unemployment or underemployment during the qualifying period for the second quarter was a direct result of the impairment from the compensable injury is affirmed. The hearing officer's decision that the claimant is entitled to SIBs for the second quarter because he made a good faith effort to seek employment within the meaning of the rules is reversed, and a new decision is rendered that the claimant is not entitled to SIBs for the second quarter because he did not document a job search every week of the qualifying period as required by Rule 130.102(e).

The true corporate name of the insurance carrier is **ARGONAUT-SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH A. YURKOVICH  
1431 GREENWAY DRIVE, SUITE 450  
IRVING, TEXAS 75038.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge